Covernment of the District of Columbia zoning commission



ZONING COMMISSION ORDER NO. 747

Case No. 92-11

(Map Amendment - Fort Totten)

December 13, 1993

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on February 18, 22 and March 25, 1993. At these hearing sessions, the Zoning Commission considered a proposal of the District of Columbia Office of Planning (OP) and the Upper Northeast Community Coalition (UNCC), pursuant to Section 102 of the the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted under the provisions of 11 DCMR 3021.

On August 21, 1992, the Office of Zoning (OZ) received a petition, as amended on August 25, 1992, from the Upper Northeast Community Coalitions (UNCC). The petitioners requested that the properties within the boundary of the Fort Totten Metrorail study area be rezoned from R-5-A, C-M-1 and M to C-2-B, C-3-A and CR.

The purposes of the rezoning proposal were to further implement the goals and the policy objectivies of the Comprehensive Plan for the National Capital, and to minimize the adverse impact that some industrial uses had on the neighboring residential areas.

The Fort Totten Metrorail study area is located in the upper northeast quadrant of the District. It is bounded by Riggs Road, an alley east of 3rd Place, an alley west of 6th Place, 6th Street, John McCormack Road, Fort Totten Park, Ingraham Street, and 1st The area includes the CSX Railroad and Metrorail Red Place, N.E. Line rights-of-way, the Fort Totten Metrorail Station and bus bays, heating supply warehouses, equipment storage yards, a fuel oil tank farm, a stone quarry, auto services and sales, a radio broadcasting station, a cabinetry/ woodwork shop, and federal parklands. Adjacent to the study area are semi-detached homes, apartments, public schools, a local multi-neighborhood shopping center and Catholic University. A tract of land along the alley west of 6th Place outside of the study area is residentially-zoned, but is occupied by industrial users.

The R-5-A District permits matter-of-right single-family detached and semi-detached dwellings, and with the approval of the Board of Zoning Adjustment, low density development of general residential uses including rowhouses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

The CR District permits matter-of-right medium/high density development of residential, commercial, and certain light industrial uses to a maximum height of 90 feet, a maximum FAR of 6.0 for residential and 3.0 for all other permitted uses, and a maximum lot occupancy of 75 percent for residential uses.

The C-2-B District permits matter-of-right low/moderate density development, including office, retail, housing, and mixed uses to a maximum height of 65 feet, a maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

The C-3-A District permits matter-of-right moderate/medium development for major retail and office uses to a maximum height of 65 feet, a maximum FAR of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of 75 percent for residential uses.

The C-M-1 District permits development of low bulk commercial and light manufacturing uses to a maximum FAR of 3.0, and a maximum height of three stories/40 feet, with new residential uses prohibited.

The M District permits general industrial uses to a maximum FAR of 6.0 and a maximum height of 90 feet with new residential uses prohibited.

The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital designates the Fort Totten area for mixed use medium density commercial and medium density residential uses. The area is designated as a Special Treatment Area with policies that exclude industrial land uses. The area is also designated as both a Development Opportunity Area and a Housing Opportunity Area.

The petitioners comprise affected Advisory Neighborhood Commissions (ANCs) 5A, 4B and 4D, the Upper Northeast Community Coalition (UNCC), as well as many civic and citizen organizations and block clubs.

By testimony presented at the public hearing the petitioners indicated they envision the area consisting of small, light business and residential development and would like to see measures put in place to control those types of development. The ANC identified problems with truck traffic along Taylor Street, Puerto Rico Avenue and McCormack Drive and along Sixth Street Fort Totten Drive, Rock Creek Church Road, N.E. and the negative impacts that it causes upon nearby roads and residential structures.

The petitioners' testimony also focused on prohibiting industrial uses altogether and changing the zoning from industrial to residential and medium-density commercial commensurate with the Comprehensive Plan. The following rezoning recommendations were offered by UNCC.

- a. North Subarea Change the C-3-A zoning proposed by OP to C-2-B and change the CR zoning proposed by OP to C-2-B.
- **b.** South Subarea Change the existing R-5-A and the proposed CR zoning by OP to C-2-B.

The Office of Planning (OP), by testimony presented at the public hearing and by reports dated December 9, 1992, and February 8, 1993, recommended that the petition be approved. OP indicated the following:

"The Comprehensive Plan designates this area for mixed used development of medium-density residential and medium-density commercial uses. Any development that might occur should be governed by zoning that is consistent with the Comprehensive Plan and therefore in the city's interest. The existing zone districts (C-M-1 and M) are inconsistent with the Comprehensive Plan. The Office of Planning's preliminary report suggested several zones be considered as map amendments before the Zoning Commission so that zoning will be "not inconsistent" with the Comprehensive Plan.

The recommended zone districts in this final report are C-2-B, C-3-A and CR. All three zones are mixed use zones at varying levels of density and mixed uses and are not inconsistent with the mixed use, medium-density commercial and medium-density residential land use designation in the Comprehensive Plan."

The OP submitted a supplemental report dated March 25, 1993 at the hearing of the same date as requested by the Zoning Commission. The Zoning Commission requested OP to elaborate on the nonconformity status of existing uses in the Fort Totten Metrorail Station area assuming a rezoning from M to CR. OP indicated the following:

"The CR zone prohibits certain specified uses (Subsection 602.1). The prohibited uses include any use also prohibited by the M District provisions (Subsection 823.1). Any prohibited use in either zone would be deemed a nonconforming use. Therefore, as provided in

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Subsection 2002.4, ordinary repairs, alterations and modernizations would be permitted. However, structural alterations would require an area variance except those required by other municipal law or regulation. Expansion of a prohibited or a nonconforming use would require a use variance.

The CR zone permits a number of warehousing and light manufacturing uses as a special exception. Any existing uses that are allowed in the CR zone by special exception are therefore conforming if they have a valid Certificate of Occupancy. The definition of nonconforming use in the Zoning Regulations specifically provides that a legally established use that later requires a special exception (due to zoning map change or text amendment) shall be deemed a conforming use."

Letters of support were received from many individuals as well as City Councilmembers Harry Thomas, Sr., Hilda Howland M. Mason, Linda W. Cropp, John Ray, Charlene Drew Jarvis and William P. Lightfoot.

Several companies testified in opposition to the proposal. These companies included; Thomas Somerville Company, Genstar Stone Products, Browning Ferris Industries, Uhar & Company, Inc., Steuart Petroleum, Super Concrete Corporation, Opportunity Concrete Corporation, Silver Hill Concrete, Gorove-Slade Association, Green Fuel Oil Company; District Land Fuel Company, The IBG Company, TSC Transport, Rivlan & Associate Inc., Magnolia Plumbing and several individuals.

The opposition's testimony included, but was not limited to the following points:

- a. The OP proposal would force many of the industrial businesses to relocate.
- b. The proposed districts are not suited for residential zoning, in part, because the sites are situated near railroad tracks. The proposed zone districts have no relationship to the low density land use designation and are inconsistent with the Generalized Land Use Map of the Comprehensive Plan.
- c. There is a lack of available industrial land in the District. There are no viable alternate locations in the city for industrial uses existing at Fort Totten, including BFI and Steuart Petroleum.

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- d. The red-tape and time required to secure a variance would make it impossible for concrete companies to respond quickly to large or special job opportunities.
- e. Making essential industrial uses non-conforming is bad public policy, and downsizing such uses creates no incentives for owners to work with the community on nuisance issues like dust and traffic.
- f. Rezoning will not serve to improve environmental conditions nor diminish concerns raised about the potential increase in number of industrial uses. Rezoning should not impair the company's ability to protect and modernize one's facility.

At the conclusion of the hearing, the Commission requested that the following information be submitted into the record prior to the closing of the record.

- a. A brief from the counsel from Hunton & Williams on behalf of Super Concrete Corporation and Silver Hill Concrete in support of their belief that the Commission has the option to send the industrial rezoning issue back to the City Council rather than just implementing it;
- b. A legislative history of the Comprehensive Plan designation for these sites;
- c. Comments on the proposed rezoning from the Office of Business and Economic Development (OBED) and the Department of Public Works (DPW);
- d. An OP final report;
- e. A list of Super Concrete's plans for modernization, expansion and/or repair of its facility.

By letter dated June 2, 1993, counsel from Hunton & Williams representing Super Concrete Corporation and Silver Hill Concrete responded to the Commission's request. In summary, that information indicate:

1. "That the establishment of Fort Totten as a Special Treatment Area (STA) in 1984 has not been revisited by the the Council in the last nine (9) years despite the District's lack of industrial zoned land and critical waste management problems, except to correct a mapping error by OP in designating the boundaries of the STA consistent with the 1984 Land Use Element;

- 2. The Commission is an independent quasi-legislative body which has the authority under the Home Rule Act to disapprove the proposed downzoning even if it is consistent with certain elements of the Comprehensive Plan.
- 3. Super and Opportunity Concrete will have to expand their existing businesses at Fort Totten to meet changes in technology affecting ready-mix concrete. It should be noted that the soon-expected withdrawal of the Buzzard Point sites from availability to District concrete companies and the necessity of having concrete delivered to sites within the District and unloaded within forty-five (45) minutes after batching will make it necessary for all ready-mix concrete making for the District to be done at Fort Totten."

By memorandum dated June 10, 1993, OP submitted DPW's May 20, 1993 report which was "lost" in the intergovernmental system. The report outlined the following:

- a. Current and future operations at the Fort Totten Transfer Station and the need for the costs associated with maintaining the facility at its present location.
- b. Plans to improve the facility and/or the feasibility to relocate the site away from the Fort Totten area.
- c. An analysis of the potential impacts of more restrictive zoning on the transfer station.
- d. The manner in which DPW effectuates a truck route plan and other truck mitigation measures for the District facility and other industrial operations in the Fort Totten Metrorail area.

By report dated September 1, 1993, OP responded to information requested by the Zoning Commission which contained a review of the major issues in the case and a revised recommendation. The report included: (1) a summary testimony; (2) a revised rezoning proposal that contains "overlay" provisions for the previously proposed CR zone which will allow the existing industrial to remain and expand and (3) a recommendation to the Zoning Commission to postpone further action on this case until Council has acted on Bill 10-212, the "Comprehensive Plan Amendments Act of 1993."

Responses to the September 1, 1993 OP supplemental report were received from Hunton & Williams dated September 7, 1993 and the Brookland Neighborhood Civic Association dated September 6, 1993. The Hunton & Williams letter concluded that the petition should be

dismissed because the petitioners have failed to carry out their burden of proof. It also indicated that if the Commission decides not to dismiss the petition, the overlay is not objectionable to their clients, but they believe that it should be implemented immediately.

The Brookland Neighborhood Civic Associations' letter indicated that the Association continues to support the general objectives of the Comprehensive Plan Polcies for long term conversion from industrial uses to mixed residential/commercial uses that are oriented to rapid transit.

The Commission does not concur with the recommendation of OP and the petitioners that the Fort Totten area be rezoned from R-5-A, C-M-1 and M to C-2-B, C-3-A and CR.

The Commission is aware that the proposed rezoning is silent on the issue of the relocation of the industrial businesses and further notes that the proposal does not recognize the importance of existing industrial uses or interim uses and the need to provide protection for those businesses.

The Commission believes that the economic development element of the Comprehensive Plan which places a high priority on stimilating and facilitating a variety of commercial, retail, recreational development investments appropriate to selected Metrorail Station areas outside of the Central Employment Area will not be fully realized if the petition is approved.

In consideration of the reasons set forth herein, the District of Columbia Zoning Commission hereby orders DENIAL of the petition which requested a zone change from R-5-A, C-M-1 and M to C-2-B, C-3-A and CR for the Fort Totten Metrorail Study area.

Vote of the Zoning Commission taken at the public meeting on October 18, 1993: 4-0 (Maybelle Taylor Bennett, William B. Johnson, John G. Parsons and Jerrily R. Kress, to deny; William L. Ensign, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at the public meeting held on December 13, 1993 by a vote of 4-0 (John G. Parsons, William B. Johnson, Jerrily R. Kress and Maybelle Taylor Bennett, to deny; William L. Ensign, not voting, not having participated in the case).

In accordance with 11 DCMR, Section 3028, this order is final and effective upon publication in the D.C. Register; that is on \$\$

MAYBELLE TAYLOR BENNETT

Chairperson /

Zoning Commission

MADELIENE M. ROBINSON

Director

Office of Zoning

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